

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

8.05 CV 2313-T30 MAP

JOHN R. WILLIAMS, JR.
3731 Hwy 60 E, Lot 12
Lake Wales, FL 33898

Plaintiff

vs.

CA No. _____

DEPARTMENT OF VETERANS AFFAIRS

SERVE: James Nicholson, Secretary
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

SERVE: Regional Office
Department of Veterans Affairs
P.O. Box 1437
St. Petersburg, FL 33731-1437

Defendant

**COMPLAINT FOR DECLARATORY, INJUNCTIVE AND
MONETARY RELIEF**

COMES NOW Plaintiff, John R. Williams, Jr., Pro Se, and brings this cause of action under the Freedom of Information Act and Privacy Act (hereinafter referred to as "FOIA/PA"), against the Department of Veterans Affairs (hereinafter referred to as "Agency"), for the Agency's actions set forth below, which resulted in violations, adverse effects, and intentional or willful conduct by the Agency regarding records, as well as, accuracy of said records maintained by the Agency, which precludes Plaintiff from receiving a

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MIDDLE DISTRICT OF FLORIDA
LAKE WALE, FLORIDA

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fair and impartial determination of any pending or future benefits and entitlements sought by Plaintiff, pursuant to Agency requirements through the administrative process, as well as, leaving Plaintiff unable to proceed with a "Personal Hearing" before the Board of Veterans Appeals regarding "benefits reinstatement and other entitlements", with an incomplete and inaccurate record. In support of said cause of action, Plaintiff states as follows:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief, as well as, for monetary relief. This Court has jurisdiction under the Freedom of Information Act, 5 U.S.C. Section 552, as amended, and the Privacy Act of 1974, as amended, 5 U.S.C. Section 552a, including, but not limited to, Civil Remedies under (g)(1)(A); (g)(1)(B); (g)(1)(C); (g)(1)(D); (g)(2)(A); (g)(3)(A); (g)(4)(A) and (g)(4)(B), as well as, criminal actions under 552a(I)(3).

2. Plaintiff has pursued all Agency administrative processes in an attempt to resolve all issues contained in this action before bringing this action before this Court.

3. Plaintiff's appeals have resulted in two letters from the Agency, advising Plaintiff of his rights to file suit in the appropriate US District Court.

CAUSE OF ACTION

Plaintiff brings this action, as a result of the Agency's actions under the Freedom of Information Act and the Privacy Act, as set forth above, for Agency violations for failure to maintain records, failure to correct records, failure to respond to requests under said Acts, as well as, wrongful denials by the Agency, all resulting in adverse effects to Plaintiff, causing "mental distress and emotional trauma."

BACKGROUND

Plaintiff is a Viet Nam veteran with a 100% service connected PTSD rating from the Agency for over ten (10) years, thereby making the Agency, among other things, Plaintiff's "lifetime healthcare provider".

Plaintiff was granted "Fee Basis for All Conditions" by the Agency in July 2002, while residing in Las Vegas, Nevada. Said Fee Basis grant to Plaintiff was deemed medically necessary by the Agency's Chief of Psychiatry, and concurred with by the Agency's Chief of Staff, due to Plaintiff's former Agency therapist engaging in an "inappropriate relationship" with Plaintiff spanning a five year period, i.e., 1993 to 1998. Plaintiff provided the Agency's Chief of Psychiatry with all records regarding Plaintiff's Complaint filed with the Agency regarding said "inappropriate relationship". Said records included the Agency's response, i.e., directing Plaintiff to file his Complaint with the Maryland State Board of Examiners of Psychologists,

which Plaintiff did in 1999, as well as, the response by the Maryland State Board of Examiners of Psychologists, stating it was determined to be an Agency matter, solely under the jurisdiction of the Department of Veterans Affairs and, as such, must be handled by the Agency. The Agency refused to accept said determination, refused to investigate said Complaint, and refused Plaintiff's request to place said Complaint in the VA3200 system of records, maintained by the Agency regarding all such complaints. To date, Plaintiff's Complaint has never been accepted by the Agency.

Plaintiff's grant by the Agency of "Fee Basis for All Conditions", paid for all Fee Basis services rendered to Plaintiff from July 2002 through January 31, 2004, with a payment by the Agency of 100% or an amount acceptable to the Provider of said services.

Plaintiff temporarily relocated to Lake Wales, Florida from Las Vegas, Nevada on or about January 26, 2003.

Plaintiff continued to receive Fee Basis services for all ongoing medical treatment, including monthly treatment for PTSD, all of which were fully paid for by the Agency through January 31, 2004.

On January 13, 2004 the Agency notified Plaintiff that the Agency jurisdiction responsible for payment of Plaintiff's Fee Basis treatment as of February 1, 2004, would be the Tampa VAMC.

From February of 2004 to May 19, 2004, Plaintiff sought help from Senator Nelson's office to resolve the matter of Fee Basis, as Plaintiff was unable to continue the ongoing treatment, due to Tampa VAMC's refusal to accept Plaintiff's grant of Fee Basis by the Agency.

Plaintiff's Fee Basis for all conditions was reinstated by the Tampa VAMC on May 11, 2004. However, Plaintiff was not notified until Senator Nelson's office called Plaintiff on May 19, 2004.

Plaintiff's Fee Basis was totally paid for by the Agency for the months of June and July, 2004. Follow-up exams in October and November 2004, were partially paid for by the Agency, leaving Plaintiff responsible for the unpaid bills, without any notice to Plaintiff regarding a change in the Fee Basis status.

Plaintiff was advised by the Bond Clinic in April 2005, where Plaintiff had been receiving Fee Basis treatment since January 2003, that the Tampa VAMC had terminated all treatment for Plaintiff, thereby leaving Plaintiff without any healthcare.

As a result of the background set forth above, Plaintiff sought the Agency's records under FOIA/PA, in an attempt to resolve these matters, administratively, or to enable Plaintiff to go forward with a "Personal Hearing" before the Board of Veterans Appeals to resolve these matters.

For purposes of clarification, due to the complexity of the actions of the Agency as contained in this action, Plaintiff has set forth below, separate "Facts" relating to specific actions by the Agency, i.e., the "March 16, 2004 document", the "Acting Regional Counsel document", the "Fee Basis treatment", the "VA Congressional Liaison's actions with Senator Nelson's Office", and other miscellaneous actions by the Agency.

FACTS REGARDING MARCH 16, 2004 DOCUMENT

1. On May 25, 2004 Plaintiff received a disturbing phone call from the Agency, in the person of Todd Markim, Veterans Service Center Regional Office, Bay Pines, Florida (hereinafter referred to as "Markim"), advising Plaintiff that member(s) of the Bay Pines Regional Counsel Office were attempting to take possession and control of Plaintiff's C-File for transfer back to the Reno, NV VARO. Further, Markim advised Plaintiff that the Bay Pines Regional Counsel Office provided him with a document date stamped March 16, 2004 by the Reno, NV VARO, regarding said transfer of Plaintiff's C-File to the Reno, NV VARO. Markim's call to Plaintiff was due to the fact that Plaintiff had a scheduled appointment to meet with Markim to review Plaintiff's C-File, in preparation for a "Personal Hearing" which Plaintiff had requested. As the file was in the possession of Markim, with a scheduled appointment to meet with Plaintiff to review said file in preparation for

Plaintiff's "Personal Hearing", Markim contacted Plaintiff regarding said attempts by the Bay Pines Regional Counsel Office to transfer Plaintiff's C-File back to the Reno, NV VARO.

2. On May 25, 2004 Plaintiff requested from Markim, a copy of said correspondence date stamped March 16, 2004 from the Reno, NV VARO. Plaintiff received the requested copy from Markim in a May 27, 2004 date-stamped envelope from the Regional Office. Further, Plaintiff received a copy of his entire C-File from the Regional Office. Plaintiff's C-File contained a copy of Plaintiff's May 25, 2004 letter to Markim, confirming the above-referenced telephone conversation, with Markim's handwritten notes indicating that he had sent the document to Plaintiff on May 26, 2004, along with the questionable document showing both the original date stamp by the Reno, NV VARO of September 21, 2001 and the date stamp by the Reno, NV VARO of March 16, 2004.

3. On June 1, 2004 Plaintiff wrote to the Agency, in the person of Kathy Wallace, Legal Assistant, Bay Pines Regional Counsel Office (hereinafter referred to as "Wallace"), as Wallace was the author of the document date stamped by the Reno, NV VARO on both September 21, 2001 and March 16, 2004. Plaintiff's letter sought an answer as to why Wallace's 3 year old document was, again, sent to the Reno, NV VARO in March of 2004, as said document could have resulted in Plaintiff's C-File not being

transferred to the Veterans Service Center, Bay Pines Regional Office, as requested by Plaintiff. Upon receipt of Plaintiff's C-File by the Bay Pines Regional Office, after said transfer was completed, said document could have resulted in Plaintiff's C-File being transferred back to the Reno, NV VARO, thereby precluding Plaintiff from having a "Personal Hearing".

4. On June 1, 2004 the Agency, in the person of Gary R. Slemmens, Assistant Regional Counsel (hereinafter referred to as "Slemmens"), responded to Plaintiff's June 1, 2004 letter to Wallace, asserting the questionability as to whether the Reno, NV VARO received or date stamped the subject document on March 16, 2004, although said document was provided to Plaintiff by the Agency, in the person of Markim. Said response from Slemmens stated, **"I have discussed this with Ms. Wallace and she assures me that she has no knowledge as to how or whether the Reno VARO received or date stamped the subject document."** Said statement from Slemmens questions the subject document Markim was in possession of and provided to Plaintiff, as well as, being contained in Plaintiff's C-File from the Agency's Regional Office, with Markim's handwritten notes on said document, which includes a copy of the Reno, NV VARO date stamp of September 21, 2001 and March 16, 2004.

5. On June 8, 2004 Plaintiff sent a detailed FOIA/PA request to the Agency, in the person of Slemmens, requesting all of Plaintiff's records from

January 1, 2004 to date, maintained by the Bay Pines Regional Counsel Office. In said letter, Plaintiff also sought an "accuracy correction" to Slemmens' response to Plaintiff's June 1, 2004 letter to Wallace, as set forth in paragraph 4 above.

6. On June 15, 2004 the Agency, in the person of Slemmens, responded to Plaintiff's detailed FOIA/PA request as set forth in Paragraph 5 above, by stating that "... Ms. Wallace nor any other member of the Region 6 Office of Regional Counsel, has any responsive information beyond that contained in my 6/1//04 written response. Accordingly, no further response to your 6/1/04 facsimile request will be forthcoming from the Regional 6 Office of Regional Counsel." In the same letter, Slemmens also responded to Plaintiff's further request of June 8, 2004 regarding all of Plaintiff's records from January 1, 2004 to date, maintained by the Bay Pines Regional Counsel Office, by simply sending Plaintiff's request of June 1, 2004 and Slemmens' response of June 1, 2004, as set forth in paragraph 4 above.

7. On February 1, 2005 Plaintiff sent a more detailed FOIA/PA request to the Agency, in the person of Wallace, seeking all records relating to any transfer of Plaintiff's records to the Reno, NV VARO.

8. On February 8, 2005 Plaintiff sent another FOIA/PA Act request to the Agency, in the person of Slemmens, specifically requesting all records maintained by the Bay Pines Regional Counsel Office on Plaintiff, including

any and all communications between the Bay Pines Regional Counsel Office and the OGC, OIG, and/or the VA's Congressional Liaison Office, during the period from 2004 to 2005.

9. On February 10, 2005 the Agency, in the person of K. Sue Meyer, Regional Counsel (hereinafter after referred to as "Meyer"), responded to Plaintiff's FOIA/PA request dated February 1, 2005, directed to Wallace, as set forth in Paragraph 7 above, by, again, only sending Plaintiff a copy of Plaintiff's original FOIA/PA requests, along with the Agency denials as to any and all records maintained by the Agency.

10. On February 15, 2005 Plaintiff notified the Agency, in the person of Meyer, that Plaintiff was appealing the Agency's denial of records, specifically relating to Wallace, Slemmens and the document date stamped March 16, 2004 by the Reno, NV VARO.

11. On February 23, 2005 the Agency, in the person of Meyer, denied Plaintiff's February 8, 2005 FOIA/PA request for records, as set forth in Paragraph 8 above. The denial referred to previous FOIA/PA requests, in which the Agency simply sent copies of Plaintiff's FOIA/PA requests. Further, the Agency, in the person of Meyer, set forth a FOIA exemption regarding the administrative tort claim received by the Agency from Plaintiff, when Plaintiff only sought the Agency records of Wallace and Slemmens regarding

the subject document date stamped by the Reno, NV VARO on March 16, 2004. Plaintiff's FOIA/PA request did not request the records regarding the administrative tort claim filed by Plaintiff on June 21, 2004.

12. On March 1, 2005 the Agency, in the person of Meyer, responded to Plaintiff's FOIA/PA appeal, as set forth in Paragraph 10 above, by referring Plaintiff to the Agency's Office of General Counsel (hereinafter referred to as "OGC") for such appeals.

13. On April 28, 2005 Plaintiff sent another FOIA/PA request to Wallace, seeking "any and all records in any form of existence including all digital records including, but not limited to, the VA's CAPS and COVERS systems of records that contain "...as little as one descriptive item..." relating to the subject document originated by Wallace which shows a date stamp by the Reno, NV VARO on September 21, 2001 and, again on March 16, 2004. Said FOIA/PA request went further to request any and all communications with Markim, the Agency official that first alerted Plaintiff to the Agency's attempts to "take control and return to Reno, NV VARO" Plaintiff's C-File.

14. On May 25, 2005 the Agency, in the person of Tim S. McClain, General Counsel (hereinafter referred to as "McClain") responded to Plaintiff's FOIA/PA appeal dated February 15, 2005, as set forth in Paragraph 10 above, by issuing a final decision under FOIA, denying Plaintiff's appeal.

Although Plaintiff's appeal was under both FOIA and the Privacy Act, McClain ignored the Privacy Act. McClain went further to advise Plaintiff that Plaintiff's requests for records sought, were not specific enough. Lastly, McClain advised Plaintiff to either start over the "FOIA" process by going back to the Bay Pines Regional Counsel Office, or to file suit in the appropriate US District Court. In response to McClain's denial, on June 2, 2005, Plaintiff sent him a copy of the April 28, 2005 FOIA/PA request to Wallace, as set forth in Paragraph 13 above. To date, no further response has been received from the Agency.

15. On June 10, 2005 the Agency, in the person of Meyer, responded to Plaintiff's FOIA/PA request dated April 28, 2005, as set forth in Paragraph 13 above, regarding Agency records relating to the March 16, 2004 subject document provided to Markim by the Regional Counsel Office on May 25, 2004 in an attempt to transfer Plaintiff's C-File back to the the Agency's Reno, NV VARO. Meyer's response was, in essence, a "**no records**" response.

16. On August 24, 2005 Plaintiff sent another FOIA/PA request to Wallace, pursuant to McClain's instructions as set forth in Paragraph 14 above, i.e., to start over at the Bay Pines Regional Counsel Office, again, seeking the same records as set forth in Paragraph 13 above.

17. On September 7, 2005 the Agency, in the person of Meyer, again, responded with a **"no records"** response.

FACTS REGARDING THE "ACTING REGIONAL COUNSEL"

18. On August 30, 2004 the Agency, in the person of Slemmens, denied Plaintiff's June 21, 2004 Federal Tort Claim, signing as Gary R. Slemmens, "Acting Regional Counsel". Said Federal Tort Claim was being handled by the Agency, in the person of James J. Kelly, Staff Attorney (hereinafter referred to as "Kelly"). Although numerous written communications took place between Plaintiff and Kelly regarding Plaintiff's Federal Tort Claim, including Plaintiff's inability to submit evidence until late August or September of 2004, due to cancellations of Plaintiff's scheduled Doctors' appointments because of Hurricanes Charley, Frances, and Jean, thus preventing Plaintiff from being able to submit his medical evidence in support of said Federal Tort Claim, the subject Federal Tort Claim was removed from Kelly and denied by the Agency, in the person of Slemmens.

19. On September 1, 2004 Plaintiff formally notified the Agency, in the person of Slemmens, of Plaintiff's withdrawal of said Federal Tort Claim, thereby notifying the Agency that "no pending litigation" was possible. In said letter, Plaintiff requested records under the FOIA/PA, i.e., the "comprehensive investigation" relied upon by the Agency in the subject denial.

20. On September 14, 2004 the Agency, in the person of Slemmens, now signing as "Assistant Regional Counsel", denied Plaintiff's FOIA/PA request as set forth in Paragraph 19 above.

21. On January 18, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the person of Meyer, requesting "any and all records in any form of existence that will prove that anyone other than yourself was the bona fide "Regional Counsel" and/or the official "Acting Regional Counsel" for the Bay Pines Regional Counsel's office from June 1, 2004 through September 15, 2004."

22. On January 25, 2005 the Agency, in the person of Vicki L. Bowman, FOIA Officer, James A. Haley Veterans' Hospital (hereinafter referred to as "Bowman") responded to Plaintiff's FOIA/PA request, as set forth in Paragraph 21 above, by stating "This is a **no records** response, please refer your request to: Ms. K. Sue Meyer, Regional Counsel, Office of General Counsel, Department of Veterans Affairs, P.O. Box 5005, Bay Pines, FL 33744." As Bowman's response was, in fact, responding to Plaintiff's FOIA/PA request addressed to Meyer, ***Plaintiff is unclear as to why his FOIA/PA requests are no longer being handled by the FOIA/PA Officer of the Agency.***

23. On January 26, 2005 the Agency, in the person of Meyer, also responded to Plaintiff's FOIA/PA request as set forth in Paragraph 21 above,

by simply sending Plaintiff portions from "The General Counsel Handbook", which was not responsive to Plaintiff's FOIA/PA request.

24. On January 31, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the person of Kelly, seeking all records in the development of Plaintiff's Federal Tort Claim by Kelly, as well as, the completion of the "comprehensive investigation" and review of same, upon which Slemmens, as "Acting Regional Counsel", based the Agency denial. To date, no response has been received from the Agency.

25. On January 31, 2005 Plaintiff sent another FOIA/PA request to the Agency, in the person of Meyer, requesting any and all records relating to Plaintiff's Federal Tort Claim development and denial relied upon by the Agency, as well as, records relating to Slemmens' authority to deny said claim as "Acting Regional Counsel".

26. On February 9, 2005 Plaintiff sent a FOIA/PA request to the Agency OGC requesting "any and all records from the Agency, that shows that Slemmens had the authority to deny Plaintiff's Federal Tort Claim as "Acting Regional Counsel". Said FOIA/PA request went further to request "any and all records between the Bay Pines Regional Counsel Office and the OGC, involving and/or relating to Plaintiff's claims and/or his records for the years of 2004 and 2005."

27. On February 14, 2005 Plaintiff appealed the Agency response dated January 26, 2005 as set forth in Paragraph 23 above, regarding Plaintiff's January 18, 2005 FOIA/PA request as set forth in Paragraph 21 above. Plaintiff also appealed the Agency's withholding of records under the "anticipation of litigation" exemptions as Plaintiff's Federal Tort Claim was withdrawn by Plaintiff on September 1, 2004.

28. On February 14, 2005 Plaintiff sent another FOIA/PA request to the Agency, in the person of Meyer, again seeking "any and all records in any form of existence that will prove that anyone than yourself was the bona fide "Regional Counsel" and/or the official "Acting Regional Counsel" for the Bay Pines Regional Counsel's office from June 1, 2004 through September 15, 2004."

29. On February 14, 2005 Plaintiff sent a letter to the Agency, in the person of Pamela Prewitt, Office of Inspector General (hereinafter referred to as "OIG"), submitting a "formal complaint" against Slemmens in the denial of Plaintiff's Federal Tort Claim, stating Slemmens "...acted in a fraudulent manner impersonating his supervisor's authority by signing his name as "Acting Regional Counsel". Said Complaint was a result of the Agency response, in the person of Bowman, to Plaintiff's FOIA/PA request. Said response from the Agency stated that there are "**no records**" indicating Slemmens had such authority. Plaintiff made it clear in said letter that he

was not seeking any Agency determination regarding the substance of Plaintiff's Federal Tort Claim. Plaintiff only sought a response from the OIG regarding Plaintiff's "formal complaint" against Slemmens, i.e., "...whether or not Slemmens had the authority to sign as "Acting Regional Counsel" for the Bay Pines Regional Counsel's Office on August 30, 2004." To date, no response has been received from the Agency regarding said "formal complaint" of fraud and abuse by a government agency.

30. On June 2, 2005 Plaintiff faxed a reminder to Slemmens, via Keith Ziegler (Plaintiff's "Point of Contact" assigned by the Agency), for a copy of the "comprehensive investigation" relied upon by Slemmens in his August 30, 2004 denial, as "Acting Regional Counsel", of Plaintiff's Federal Tort Claim. Said request by Plaintiff also sought an "accuracy correction" to Plaintiff's records maintained by the Agency.

31. On June 9, 2005 the Agency, in the person of McClain, denied Plaintiff's FOIA/PA appeal regarding the authority of Assistant Regional Counsel, Gary R. Slemmens, to deny Plaintiff's Federal Tort Claim as "Acting Regional Counsel". However, said denial by McClain was under the FOIA Act. Said denial failed to refer to Plaintiff's Privacy Act request but, did however, specifically state that the Agency decision "...only concerns your appeal of the decision of the Bay Pines RC regarding your January 18 request for records and does not extend to the issues raised in your February 14

correspondence. Any new request for records must be filed with the FOIA Officer ...” Therefore, Plaintiff’s FOIA/PA request dated February 14, 2005 to the Agency, in the person of Meyer, as set forth in Paragraph 28 above, remains unanswered. Further, McClain’s response did acknowledge Plaintiff’s FOIA/PA request, by again, ignoring the Privacy Act and responding only to FOIA, regarding any and all records between the Bay Pines Regional Counsel Office and the Office of General Counsel in Washington, DC regarding Slemmens authority to sign as “Acting Regional Counsel, by stating that “Subsequent to your appeal, we learned from the Bay Pines RC that **no documents exist**” regarding whether or not Slemmens had the authority on August 30, 2004, to sign his name as the official “Acting Regional Counsel”. Said response from McClain further stated that “...we believe the efforts taken to locate the documents you seek were sufficient to satisfy the duty of the Department under the FOIA to conduct a reasonable search for the requested records.” Thus, the Agency has again confirmed that they have **no records** regarding the authority of “Acting Regional Counsel” Slemmens on August 30, 2004. In said response from McClain, Plaintiff was advised “...to file a complaint in an appropriate United States District Court.”

32. On June 13, 2005 the Agency, in the person of Meyer, again, denied Plaintiff’s FOIA/PA request for the “comprehensive investigation” of Plaintiff’s Federal Tort Claim, by stating “...that the requested records were

exempt from disclosure ...", although Plaintiff notified the Agency of the withdrawal of the subject Federal Tort Claim on September 1, 2004 and the statute of limitations expired in March of 2005 for any litigation by Plaintiff.

33. On June 17, 2005 Plaintiff sent another detailed FOIA/PA request to Slemmens seeking any and all records relating to any official duties performed by Slemmens as "Acting Regional Counsel" on August 30, 2004, including any communications between any VA officials, as well as, any other VA offices. Plaintiff also sought "...any and all records in any form of existence that would indicate you took possession and control of my official records regarding my tort claim from James J. Kelly under conditions other than false pretenses, to deny my claim on an inaccurate, incomplete and defective record resulting in multiple adverse effects...".

34. On June 30, 2005 the Agency, in the person of Meyer, responded to Plaintiff June 17, 2005 request, as set forth in Paragraph 33 above, by stating that "...**this Office does not maintain records in a manner that provides for retrieval of records by the parameters referenced by you...**" Said response also enclosed another copy of the General Counsel Handbook, previously provided. Said response also indicated that the Agency had "**no records**" relating to Slemmens taking control of Plaintiff's Federal Tort Claim, which was being handled properly by James J. Kelly, who was awaiting Plaintiff's medical evidence in support of said Federal Tort

Claim. Further, the Agency response failed to identify each and every individual VA system of records that were included in this response to Plaintiff's FOIA/PA request.

35. On August 19, 2005 Plaintiff sent a letter to the Agency, i.e., the Office of General Counsel, Department of Veterans Affairs, P.O. Box 5005, Bay Pines, FL 33744, as directed by Bowman and Farley, seeking a response to Plaintiff's FOIA/PA requests regarding records giving Slemmens the authority to identify himself as the "Acting Regional Counsel" on August 30, 2004. To date, no response has been received from the Agency.

36. On August 24, 2005 Plaintiff sought the assistance of Senator Nelson regarding Plaintiff's February 14, 2005 "formal complaint" to the OIG, regarding allegations "...that Slemmens acted in a fraudulent manner misrepresenting his official authority, in the course of denying a million dollar tort claim on behalf of the Department of Veterans Affairs." To date, the OIG or any other official of the Agency has failed to respond to Senator Nelson regarding Plaintiff's "formal complaint", as set forth in this Paragraph.

37. On September 1, 2005 the Agency, in the person of Meyer, responded to Plaintiff's August 19, 2005 letter, as set forth in Paragraph 35 above by stating "I have previously responded to you, regarding your records requests associated with these allegations, providing you with all

supporting documentation indicating the authority under which Mr. Slemmens was, and remains, authorized to conduct the business of the Office of Regional Counsel as Acting Regional Counsel.” Again, said Agency response regarding “all supporting documentation”, refers only to the “General Counsel Handbook” provided twice by Meyer to Plaintiff, which does not affirm that Slemmens had such authority on August 30, 2004. Further, Meyer’s response to Plaintiff’s two previous FOIA/PA requests regarding this matter, were a “**no records**” response. Meyer’s last response, coming one week after Plaintiff sought Senator Nelson’s assistance regarding Plaintiff’s “formal complaint” to the OIG regarding Slemmens’s authority on August 30, 2004, indicates that “Mr. Slemmens was, and remains, authorized to conduct business of the Office of Regional Counsel as Acting Regional Counsel”. However, Meyer’s response is “questionable”, as Slemmens’ response to Plaintiff on September 14, 2004, 15 days after said August 30, 2004 denial, as set forth in Paragraph 20 above, was signed by Slemmens as “Assistant Regional Counsel.” ***It appears that Meyer authorizes Slemmens to “switch hats”, i.e., from Assistant Regional Counsel to “Acting Regional Counsel”, whenever “deemed necessary by the Agency, in the person of Meyer or the OGC”.***

38. The Agency, in the person of Meyer, went further to acknowledge Plaintiff’s request to forward Plaintiff’s “...complaints of fraud, abuse and

record tampering against Gary R. Slemmens to the VA's Inspector General." Rather than forwarding Plaintiff's complaint of fraud, abuse and record tampering, Meyer's response to Plaintiff was "If you wish to communicate your complaint ...to the Office of Inspector General, their Hotline phone number is 1 800 488 8244...".

FACTS REGARDING FEE BASIS TREATMENT

39. On January 13, 2004 Plaintiff was advised by the Las Vegas VAMC that Plaintiff's Fee Basis for "all conditions" would be under the jurisdiction of the James A. Haley Veterans' Hospital (referred to in this action as "Tampa VAMC"), as of February 1, 2004.

40. During February, 2004 Plaintiff had numerous telephone conversations with the Tampa VAMC Fee Services Section to seek continuation of Plaintiff's ongoing treatment from the Bond Clinic, all to no avail.

41. On February 19, 2004 Plaintiff sought the assistance of Senator Bill Nelson in an attempt to resolve said matter in order that Plaintiff could continue the ongoing treatment being paid for by the Agency, before Tampa VAMC became involved.

42. On March 4, 2004, upon the requirement of the Fee Services Section, Tampa VAMC, Plaintiff appeared for an appointment at the Tampa

VAMC to enroll, although the Agency determined that Plaintiff had been enrolled at the Tampa VAMC since the year 2000.

43. On March 25, 2004 Plaintiff, in support of his request for continuation of his Fee Basis treatment, provided the Agency, in the person of Jorge Creus, Chief, Fee Services Section (hereinafter referred to as "Creus"), with a copy of a letter dated March 22, 2004, from Plaintiff's VA Fee Basis Psychiatrist, who had been treating Plaintiff and, had been paid for by the Agency, for more than a year, i.e., Norton A. Roitman, MD, as well as, the underlying evaluation of the VA's Chief of Psychiatry, Rena Nora, MD, Las Vegas VAMC, which resulted in Plaintiff's grant of Fee Basis for "all conditions" by the Agency.

44. On April 21, 2004 the Agency, i.e., the Tampa VAMC, scheduled Plaintiff for a Fee Basis evaluation on May 5, 2004 at the Tampa VAMC, failing to accept the previous Agency evaluation, as well as, the evaluation of Plaintiff's VA Fee Basis Psychiatrist, as set forth in Paragraph 43 above. Said evaluation was required by the Agency, in the person of Creus, in order to consider the issue of Fee Basis for Plaintiff, although Plaintiff had been granted Fee Basis for "all conditions" by the Agency in July 2002 and had provided supporting documentation from Drs. Roitman and Nora, as set forth in Paragraph 43 above.

45. On April 25, 2004 the Agency, in the person of Creus, **denied Plaintiff's request for the Agency to continue Plaintiff's Fee Basis for "all conditions" granted by the Agency in July, 2002**, while Plaintiff resided in Las Vegas, NV. Said denial by the Agency, in the person of Creus, was made 10 days prior to the Agency's scheduled examination of Plaintiff. Said denial stated that **"the denial was based on the review of Plaintiff's "application", as well as Plaintiffs's medical records"**. However, Plaintiff had never submitted an "application" to the Agency and the Agency did not have, nor ever requested, a Release of Medical Records, signed by Plaintiff, specifically covering the period of time from July 2002 to April 25, 2004, while Plaintiff was receiving Fee Basis treatment for "all conditions" from the Agency.

46. On May 4, 2004 Plaintiff wrote to the Agency, in the person of, Lynette A. Roff, Acting Director, Tampa VAMC (hereinafter referred to as "Roff"), appealing the Agency's decision, as set forth in Paragraph 45 above.

47. On May 5, 2004 Plaintiff wrote to the Agency, in the person of Roff, with a more detailed explanation of Plaintiff's appeal of the Agency's denial, as set forth in Paragraph 45 above.

48. On June 7, 2004 Plaintiff sent a FOIA/PA request to the Agency, in the persons of Roff and Creus, seeking all records in possession or control of Roff and Creus, relating to Plaintiff, from January 1, 2004 to the date of said

FOIA/PA request, regarding Plaintiff's Fee Basis status.

49. On June 25, 2004 Plaintiff sent an amended FOIA/PA request to the Agency, in the person of Creus, for "accuracy correction" regarding the false statements contained in correspondence from Creus specifically regarding Creus' "review of my Fee Basis application", which Plaintiff never prepared or submitted to the Agency, as Plaintiff was never provided, a "Fee Basis application" for submission to the Agency.

50. On July 27, 2004 the Agency, in the person of Bowman, responded to Plaintiff's June 25, 2004 FOIA/PA request, as set forth in Paragraph 49 above, by referring to Creus' April 25, 2004 letter, as set forth in Paragraph 45, stating "...this letter is correct and accurate." Said response is false as the Agency and Creus, in particular, have produced no such "application" submitted by Plaintiff upon which the Agency's denial was based.

51. On August 5, 2004 Plaintiff sent a FOIA/PA request to the Agency, in the person of Bowman, again, requesting under the Privacy Act, "...all records in the possession, control, and/or direction of Jorge Creus relating to me, as well as, an "accuracy correction" of my records, specifically relating to any records Jorge Creus has, and or had in his possession, control, and/or direction including the "application" reviewed, as well as, all records relating

to Jorge Creus' denial of my request for Fee Basis." Said request was sought by Plaintiff as Plaintiff had never submitted an "application" to the Agency regarding Fee Basis.

52. On August 16, 2004 the Agency, in the person of Bowman, responded to Plaintiff August 5, 2004 PA request, as set forth in Paragraph 51 above, by stating "In response to your request, to the "application" and denial is a **no records** response." Further, Bowman stated "...In response to an "accuracy correction" of your records, you have the right to file an appeal."

53. On August 23, 2004 Plaintiff sent a letter to the Agency, in the person of Creus, seeking an "accuracy correction" to Creus' previous correspondence regarding Plaintiff. The Agency, in the person of Creus, responded by stating "**I find no need to address the accuracy or inaccuracy of your statements.**"

54. On April 25, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the person of Creus, requesting "any and all records in any form of existence that show all my Fee basis treatment approved, as well as, all of my Fee basis treatment denied from February 1, 2004 through April 25, 2005. Said request also included "any and all records in any form of existence that show any and all of my Fee Basis bills paid, as well as, any and all of my Fee Basis bills denied to the Bond Clinic in Winter Haven Florida

from February 1, 2004 to April 25, 2005. Lastly, "any and all records in any form of existence that relate in any way to approvals and denials of any time periods regarding my Fee basis treatment referenced above."

55. On April 28, 2005 Plaintiff sent two FOIA/PA requests to the Agency, in the persons of Creus and Roff, requesting the following:

A. "Any and all records in any form of existence that show the name and job title of the VA doctor from whom permission was granted to Fee Basis to cut off, deny, delay, restrict, limit and complicate my Fee Basis treatment regarding the Bond Clinic in Winter Haven Florida."

B. "Any and all records in any form of existence that relate in any way to any communications from the Tampa VAMC advising me that my Fee Basis treatment has been cut off, denied, delayed, restricted, and/or suspended for any reasons."

C. "Any and all records in any form of existence relating to any and all communications from the Tampa VAMC advising me of any alternative treatment recommendations due to my Fee Basis being cut off, denied, delayed, restricted and/or complicated."

D. "Any and all records in any form of existence relating to any communications from the Tampa VAMC, advising me of any changes in my Fee Basis status, as well as, advising me of any assignment to any specific medical Team or primary care physician due to my Fee Basis being cut off,

denied, delayed, restricted and complicated.” To date, no response has been received from the Agency regarding this request.

56. On May 12, 2005 Plaintiff sent a Privacy Act request to Andrea S. Muhar, M.D., requesting any and all records relating to, or involving Plaintiff’s Fee Basis status, as Dr. Muhar issued the final opinion which caused the Agency to grant the re-instatement of Plaintiff’s Fee Basis on May 11, 2004, taking it back to February 1, 2004, thereby proving that Plaintiff’s Fee Basis treatment should never have been interrupted. To date, no response has been received from the Agency.

57. On June 29, 2005 the Agency, in the person of Bowman, responded to Plaintiff’s April 25, 2005 FOIA/PA request, as set forth in Paragraph 54 above, by sending Plaintiff Fee Basis records, none of which responded to Plaintiff’s request. Said response failed to address Plaintiff’s FOIA/PA requests to Creus and Roff. Said letter instructed Plaintiff to “**file all future requests to Office of General Counsel, Department of Veterans Affairs, P.O. Box 5005, Bay Pines, FL 33744.**” The Agency, for the second time, has again, attempted to divert Plaintiff from filing appropriate FOIA/PA requests to the Agency FOIA/PA Officer. ***Plaintiff is unclear as to why his FOIA/PA requests are now being directed, for the second time, to someone other than the Agency FOIA/PA Officer,***

responsible for, and initially responding to, Plaintiff's FOIA/PA requests.

58. On August 15, 2005 the Agency, in the person of Forest Farley, Jr., Director, Tampa VAMC (hereinafter referred to as "Farley"), responded to Plaintiff's PA request dated April 25, 2005, as set forth in Paragraph 54 above, by stating "...information on this request will be forthcoming under separate cover." To date, no such information has been received from Farley or the Agency.

59. On August 19, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the person of Farley, seeking "Any and all records in any form of existence including all digital records, including, but not limited to, the VA's CAPS and COVERS systems of records that contain "...as little as one descriptive items..." relating to any and all communications between yourself and any other VA office including, but not limited to, the VA's Central Office, Headquarters Office, the VA's General Counsels' Offices, regarding me, relating to me, or any and all issues involving me." Said request also sought "...any and all records in any form of existence relating to ... my Fee Basis treatment being cut off as of April 25, 2005."

60. On August 23, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the person of Farley, seeking the records of "...any and all medical licensees employed at the Tampa VAMC having any responsibility,

connection, assignment, and/or involvement with my Fee Basis treatment that remains cut off for the 2nd time by the Tampa VAMC since April 25, 2005.” To date, no response has been received from the Agency.

61. On October 20, 2005 the Agency, in the person of Farley, responded to Plaintiff’s FOIA/PA request, as set forth in Paragraph 59 above, by stating that “Information on your Freedom of Information Act request for any and all copies of records in any form of existence relating to your fee basis treatment that remain in effect, approved or denied, from February 1, 2004 through April 25, 2005, **will be forthcoming under separate cover.** If you have any further questions regarding your request, please call Ms. Vicki Bowman at 1-888-716-7787. Please refer all future requests to: Office of General Counsel, Department of Veterans Affairs, P.O. Box 5005, Bay Pines, FL. 33744.” To date, no such information has been received from the Agency.

FACTS INVOLVING SENATOR NELSON’S ASSISTANCE THROUGH JOSEPH DUFFIE, VA CONGRESSIONAL LIAISON

62. On February 19, 2004 Plaintiff wrote to Senator Bill Nelson, to seek the Senator’s assistance to have the Agency re-instate Plaintiff’s Fee Basis treatment, which Plaintiff had been receiving from the Agency from July 2002 until January 31, 2004, and was cut-off by the Agency, in the person of Creus. Senator Nelson’s Office, in the person of Jeffrey J.

Scarpiello, Senior Constituent Advocate, began written and verbal communications with the Agency, through Joseph Duffie, VA Congressional Liaison (hereinafter referred to as "Duffie"), in an attempt to assist Plaintiff in the resolution of this matter.

63. On April 9, 2004 the Agency, in the person of Roff, responded to Senator Bill Nelson's inquiry regarding Plaintiff. In said response, eight (8) false statements were contained in the Agency response to Senator Nelson.

64. On April 27, 2004 Plaintiff wrote to Senator Bill Nelson, setting forth the eight false statements contained in Roff's April 9, 2004 letter to Senator Bill Nelson. In said letter, Plaintiff, also sought Senator Nelson's help regarding medical care and prescription medications for Plaintiff, while Plaintiff's request for fee basis reinstatement was being reviewed by the Tampa VAMC. To date, no response has been received from the Agency to provide any documents proving that the false statements contained in the April 9, 2004 letter from Roff were, in fact, true and accurate.

65. On May 18, 2004 the Agency, in the person of Duffie, called Senator Nelson's Office to advise that "...the only way Plaintiff would receive any medical treatment and/or medications from the Agency, would be for Plaintiff to appear at the Agency's Tampa VAMC and, upon Plaintiff's appearance, the police would be called..." in order to restrain Plaintiff, due to the fact that Agency personnel felt personally threatened by Plaintiff".

However, Duffie's statements to Senator Nelson's office were false, in fact, a lie, as Agency records show that Plaintiff was granted Fee Basis for "all conditions" on May 11, 2004. As Duffie had been involved with Plaintiff's Fee Basis issue, as a result of Senator Nelson's involvement since February of 2004, said response from Duffie to Senator Nelson's office could only be construed as "willful and intentional" actions by Duffie in an attempt to undermine Plaintiff's credibility with Senator Nelson's office, diverting Senator Nelson's office from pursuing the Agency's response to the April 9, 2004 letter from Roff, containing the 8 false statements, which, **remains unanswered by the Agency, i.e., to each of the 8 false statements contained in said letter.** Although said Agency responses to Plaintiff, by Farley and Bowman, stated that Roff's statements were "accurate and correct", the Agency has failed to respond to Senator Nelson as to Plaintiff's April 27, 2004 letter to Nelson, addressing each of the 8 false statements. Further, **the Agency has failed to provide any documents to Senator Nelson's office or to Plaintiff to refute facts set forth in Plaintiff's April 27, 2004 letter.**

66. On June 1, 2004 Plaintiff sent a FOIA/PA request to the Agency, in the person of Joseph Duffie, requesting all records relating to the information provided to Senator Nelson's Office on May 18, 2004.

67. On June 3, 2004 Plaintiff sent a "more specific" FOIA/PA request

to the Agency, in the person of Duffie, requesting all records to support the statements Duffie relayed to Senator Nelson's Office on May 18, 2004.

68. On June 17, 2004 the Agency, in the person of Duffie, responded to Bowman, by stating **"Vicki, with speaking with Jeff, at Senator Nelson's office reference this individual. We were just talking about his attitude and the way he expected everything he had in Los Vegas to be given him here, and expected no delays. His attitude towards coming to see his PCP was one of why, and just give him his med's and Fee Basis card. I guess staff here or Orlando felt they could treat him in our facilities and he objected to this. His attitude towards treatment is what prompt my statement to Jeff, that it could become a requirement to have him escorted if it was needed.** Said response from Duffie to Bowman on June 17, 2004, sets forth a "perceived conclusion" between Duffie and Senator Nelson's office regarding Plaintiff's attitude regarding Plaintiff's attempts to continue his Fee Basis treatment, granted by the Agency in July of 2002. Further, Duffie asserts that "staff here or Orlando felt they could treat him in our facilities and he objected to this". As "staff at Tampa VAMC" granted Plaintiff Fee Basis for "all conditions" on May 11, 2004, all of Duffie's statements to Bowman in Duffie's e-mail, dated June 17, 2004, appear to be a further attempt by Duffie to undermine Plaintiff's credibility with Senator Nelson's office.

Further, in response to Plaintiff's FOIA/PA request, as set forth in Paragraph 67 above, the Agency's response from Duffie was "I have **no records, notes, faxes, or anything along this line to support his request**".

Although Duffie has been able to set forth detailed facts regarding the May 18, 2004 conversation with Senator Nelson's office, as well as, Plaintiff's attitude, expectations, and the decision of "staff here or Orlando" regarding their ability to "treat him in our facilities", Duffie has **no records** to support any of his responses, as set forth above.

69. On June 25, 2004 Plaintiff sent an amended FOIA/PA request to the Agency, in the persons of Roff and Duffie, seeking an "accuracy correction" of Plaintiff's records, specifically addressing the actions of the Agency in failing "...to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities, or benefits to the individual that may be made on the basis of such records...". Plaintiff's request specifically referred to Roff's April 9, 2004 response to Senator Bill Nelson and Duffie's statements to Senator Bill Nelson's Office on May 18, 2004.

70. On July 20, 2004 Plaintiff sent a reminder to the Agency, in the person of Duffie, regarding Plaintiff's amended FOIA/PA request dated June 25, 2004, as set forth in Paragraph 69 above, seeking "accuracy

corrections" relating to the May 18, 2004 conversation relayed to Senator Nelson's Office by Duffie, as set forth in Paragraph 65 above.

71. On July 21, 2004 Plaintiff sent a letter to the Agency, in the person of Bowman, advising the Agency that the previous response failed to address Plaintiff's amended request for an "accuracy correction" to his records.

72. On July 27, 2004 the Agency, in the person of Bowman, responded to Plaintiff's July 20, 2004 FOIA/PA reminder, as set forth in Paragraph 70 above, by stating "In response to the false statements from Mr. Joe Duffie on May 18, 2004. There are **no records** in response to the statements made to Mr. Scarpiello." The Agency went further to state that ***"We apologize for any misconceptions that you received from Senator Nelson's office.*** The conversation between Mr. Scarpiello and Mr. Duffie was a generic conversation sometimes used when dealing with veterans."

73. On July 27, 2004 the Agency, in the person of Bowman, also responded to Plaintiff's previous request for "accuracy corrections" relating to the May 18, 2004 conversation between Senator Nelson's Office and the Agency, in the person of Duffie, by stating "In response to the false statements from Mr. Joe Duffie on May 18, 2004, **no records.**" Said Agency response also stated "In response to the false statements from Lynette Roff

letter of April 9, 2004, the statements are correct and accurate.” Although, as set forth in Paragraph 64 above, the Agency has failed to respond to each of the eight false statements, nor has the Agency produced any documents proving that the false statements in the April 9, 2004 letter from Roff were, in fact, true and accurate.

74. On August 2, 2004 Plaintiff sent a letter to Senator Nelson, enclosing a copy of the response of the Agency, in the person of Bowman, relating to the “misconceptions” by Senator Nelson’s Office.

75. On August 5, 2004, Senator Nelson’s Office, in the person of Jeff Scarpiello, Senior Constituent Advocate, responded to Plaintiff’s letter of August 2, 2004, by stating “***I relayed the remarks to your wife as they were presented to me by Mr. Joseph Duffie at the James A. Haley Veterans’ Hospital.***” Thus, there were “**no misconceptions**” on the part of Senator Nelson’s Office regarding the information received from Joseph Duffie.

76. On August 12, 2004 Plaintiff sent a letter to the Agency, in the person of Bowman, enclosing a copy of the letter from Senator Nelson’s Office and, again, seeking any records of Duffie to contradict and/or refute the statement from Senator Nelson’s Office.

77. On August 12, 2004 Plaintiff sent a formal complaint against Duffie to the Agency, in the person of Jose G. Seymour, Acting VISN 8 CO

(hereinafter referred to as "Seymour"), regarding the false and slanderous information relayed to Senator Nelson's Office by Duffie.

78. On August 20, 2004 the Agency, in the person of Bowman, responded to Plaintiff's August 12, 2004 letter to the Agency, as set forth in Paragraph 76 above, by stating "In response to your request to locate records regarding communication with Senator Nelson's office and Mr. Duffie is a **no records** response."

79. On August 23, 2004 the Agency, in the person of Roff, acknowledged Plaintiff's formal complaint to Seymour, against Joseph Duffie, stating "...**Please be assured that Mr. Duffie's supervisor will take any necessary or appropriate actions.**"

80. On February 4, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the persons of Roff and Duffie, requesting all records maintained by Duffie on Plaintiff and, more specifically, relating to the May 18, 2004 incident involving Senator Nelson's Office. To date, no response has been received from the Agency.

81. On March 4, 2005 Plaintiff sent a reminder letter to the Agency, in the person of Duffie, regarding the Agency's failure to respond to Plaintiff's February 4, 2005 FOIA/PA request, as set forth in Paragraph 80 above. To date, no response has been received from the Agency.

82. On April 28 and May 26, 2005, Plaintiff sent Privacy Act requests to Roff and Creus regarding the eight false statements given to Senator Nelson's office, as well as, the actions taken regarding Duffie.

83. On August 15, 2005 the Agency, in the person of Farley, responded to Plaintiff by stating that "...your first request regarding the eight false statements by Lynette A. Roff, Acting Director, stand as a **no records** response. Your second request in regards to Mr. Joseph Duffie, stands that **Mr. Duffie's supervisor has taken the necessary appropriate actions.**"

84. On August 23, 2005 Plaintiff sent another FOIA/PA request to Duffie, again seeking "any and all records in any form of existence including all digital records that contain "...as little as one descriptive item..." relating to any and all communications between yourself and any and all other VA officials regarding your May 18, 2004 conversation with Senator Nelson's Office relating to me." Said request also sought "any and all records in any form of existence that relate in any way to any and all "appropriate actions" taken, as described by Forest Farley, Jr. relating to my complaint against you." Further, said request sought "any and all records in any form of existence, including but not limited to any and all records in your personnel file relating to my complaint against you." To date, no response has been received from the Agency.

85. On August 23, 2005 Plaintiff also sent a FOIA/PA request to the Agency, in the person of Farley, seeking "...any and all records in any for of existence including all digital records ... relating to my complaint against Joseph Duffie, Congressional Liaison involving his false and slanderous statements to Senator Nelson's Office on May 18, 2004." Plaintiff's request went further to request:

A. "Any and all records in any for of existence that relate in any way to any communications between any and all VA Officials regarding my complaint against Joseph Duffie."

B. "Any and all records in any form of existence relating to any and all "appropriate actions" taken regarding my complaint against Joseph Duffie.:

C. "Any and all records in any form of existence that indicate that my complaint against Joseph Duffie, along with any and all appropriate actions taken regarding said complaint, were placed in the VA 3200 system of records."

To date, no acknowledgment of, or response to, Plaintiff's August 23, 2005 FOIA/PA request has been received from the Agency.

FACTS INVOLVING MISCELLANEOUS PRIVACY ACT REQUESTS

86. Plaintiff has filed numerous Federal Tort Claims against the Agency, from 1997 to date. All such claims have been denied by the

Agency, before receiving any evidence from Plaintiff in support of said claims.

87. On June 17, 2005 Plaintiff sent a FOIA/PA request to the Agency, in the person of McClain, seeking "Any and all records in any form of existence including all digital records ... relating to each and every tort claim filed by me against the VA between the years 1997 and 2005." Said request sought all communications between the OGC and all VA Regional Offices relating to the handling of said tort claims, as well as, any and all records that were used and relied upon to deny said tort claims. To date, no acknowledgment or response has been received from the Agency.

88. All Federal Tort Claims previously filed by Plaintiff, up to and including the June 1, 2004 claim denied by "Acting Regional Counsel" Slemmens on August 30, 2004, are no longer at issue for litigation as the statute for instituting legal action has expired. As such, Plaintiff seeks said records maintained by the Agency, as said records could be used against Plaintiff in any future proceedings. Further, Plaintiff, in future Agency proceedings, i.e., a "Person Hearing" to address benefit issues to be resolved, as well as, all other entitlements as a 100% service connected disabled veteran, has no way of showing the Agency records are inaccurate, incomplete or defective, without being provided copies of all records maintained by the Agency.

89. On October 21, 2005 Plaintiff sent a PA request to the Agency, in the persons of Farley, Bowman, Meyer and OGC, requesting "Any and all records in any form of existence including all digital records ... relating to any and all communications to or from the Office of General Counsel involving, relating to, and/or concerning any and all of my Freedom of Information Act requests and Privacy Act requests." Said request also sought "...any and all records in any form of existence that relate in any way to any and all instructions and/or directions to direct my Freedom of Information Act requests and Privacy Act requests to the Office of General Counsel." Said request was generated as a result of the Agency's previous FOIA/PA responses, in the person of Bowman, which were no longer being answered by Bowman. In fact, **Bowman advised Plaintiff that all further FOIA/PA requests were to be directed to either Meyer or the Office of General Counsel**, without any explanation as to why Plaintiff's FOIA/PA requests were now being handling by someone other than the FOIA/PA Officer who had been responding in a timely manner. To date, no acknowledgment or response has been received from the Agency, in the persons of Farley, Bowman and the OGC.

ALLEGATIONS AGAINST THE AGENCY

Plaintiff asserts the following allegations against the Agency for violations of the Freedom of Information Act and the Privacy Act:

1. The Agency acted in a "intentional and willful" manner, in the Agency's attempt to interfere with the transfer and possession of Plaintiff's records, i.e., C-File, in order to prevent Plaintiff from having a "Personal Hearing" to resolve all benefit issues between Plaintiff and the Agency.

2. The Agency acted in a "intentional and willful" manner, in failing to "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination" as is required by Section 552a(e)(5) of the Privacy Act of 1974, 2004 Edition.

3. The Agency acted in a "intentional and willful" manner, in failing to respond to numerous FOIA/PA requests from Plaintiff, as set forth in this action and, as required by the Privacy Act of 1974, 2004 Edition, in order for Plaintiff to resolve all matters between Plaintiff and the Agency.

4. The Agency denied Plaintiff access to Plaintiff's records, as set forth in this action, by the Agency's responses to Plaintiff's FOIA/PA requests, stating a "no records" response, which precludes Plaintiff from being able to submit all of Plaintiff's "accurate and correct" records to the BVA for a "Personal Hearing" to resolve all benefits issues.

5. The Agency denied Plaintiff's requests for "accuracy correction", as set forth in this action, by either failing to respond or "finding no need to

address" said requests. Said denial, again precludes Plaintiff from being able to present all of Plaintiff's "accurate and correct" records maintained by the Agency to the BVA, in support of Plaintiff's request for a "Personal Hearing" to resolve all issues between Plaintiff and the Agency regarding benefits and/or any entitlements.

6. The Agency's denial of Plaintiff's requests for continuation of Fee Basis treatment, was based on a "defective" record, as the Agency had no "Application" from Plaintiff, upon which the Agency based the denial. As such, the Agency wrongfully denied Plaintiff's requests for continuation of Fee Basis treatment.

7. All of the actions of the Agency, as set forth in the action, were "intentional and willful", as the Agency has deliberately changed it's policy regarding the appropriate Agency official to which Plaintiff's FOIA/PA requests are to be directed, in the Agency's attempts to wrongfully deny Plaintiff access to his "records", as well as, to deliberately confuse Plaintiff, as to the appropriate Agency official responsible for responding to Plaintiff's FOIA/PA requests, in order to hide, conceal or cover-up the actions of the Agency.

8. The actions of the Agency, as set forth in this action, have been and continue to be, "intentional and willful", in order to prevent Plaintiff from

obtaining "accurate and correct" records to present to the Board of Veterans Appeals in a "Person Hearing", where Plaintiff would be able to address all unresolved issues between Plaintiff and the Agency regarding Plaintiff's benefits and entitlements.

9. The actions of the Agency, as set forth in this action, clearly demonstrates the hostile, adversarial, and institutional biased position of the Agency, since the citable case, which sharply criticized the Agency regarding records, as well as, the Plaintiff's grant of Fee Basis for "all conditions", with no requirements for prior approval or submissions of treatment plans for approval by the Agency, as well as, no limitations on the monthly cost of said treatment, all of which was granted by the Agency, through the Las Vegas VAMC in July 2002 and had continued, without interruption, from July 2002 until February 2004, when the Tampa VAMC was advised by the Las Vegas VAMC that further billing for said Fee Basis would be through the Tampa VAMC, as jurisdiction was now in their region.

10. All of the actions of the Agency, as set forth above, resulting in "adverse effects" to Plaintiff, were "intentional and willful, as the Agency, knew or should have known, that the actions of the Agency "would most likely result in harm, damage and personal injury to Plaintiff, by means of

mental distress and emotional trauma, thereby exacerbating Plaintiff's 100% Post Traumatic Stress Disorder, as Plaintiff's treatment for PTSD remains cut off by the Agency since February 1, 2004.

In conclusion, 90 days after Plaintiff's citable case, i.e., **Williams v. Department of Veterans Affairs 104 F3d. 670 (US 4th Cir. Jan 16, 1997)**, all attempts by Plaintiff to resolve all issues through the Agency's administrative process have resulted in a willful and intentional hostile and adversarial position by the Agency against Plaintiff, resulting in denials of all administrative processes, with instructions to file suit in the District Court. In this action, the Agency's failure to comply with the provisions of the Privacy Act, leaves Plaintiff no alternative other than to file suit in the District Court to obtain Plaintiff's records and/or have said records corrected to ensure accuracy, relevance, timeliness, and completeness, all of which are paramount in order for Plaintiff to go forward with a "Personal Hearing" before the Board of Veterans Appeals to resolve the Fee Basis issues, as set forth in this action, as well as, to afford Plaintiff a fair determination in any future proceedings regarding any rights, entitlements and benefits Plaintiff is entitled to as a Viet Nam Veteran with a rating of 100% for Service Connected PTSD for over ten (10) years. It is imperative that Plaintiff have accurate and complete records to go forward with a "Personal Hearing", as

Plaintiff had been receiving Fee Basis treatment for his 100% Service Connected PTSD disability, on a daily, weekly and monthly basis from May 2002 until February 2004, all of which was paid for by the Agency. On February 1, 2004 the Tampa VAMC cut off said treatment and, to date, has failed respond to all of Plaintiff's requests for reinstatement of said treatment.

WHEREFORE, Plaintiff prays that this Court:

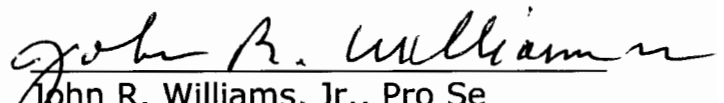
1. Declare the Agency in violation of the Privacy Act.
2. Require the Agency to produce all records sought in this action.
3. Require the Agency to create and/or correct all records in issue in this action and to maintain all records accurate, complete and in a timely manner, with a copy provided to Plaintiff.
4. Determine the criminal liability of the Agency as set forth in this action.
5. Require the Agency to provide Plaintiff with all "systems of records" in which Plaintiff records are, or should be, stored for access and retrievability.
6. Determine if the Agency has the right to deny Plaintiff's request under the Privacy Act, for copies of all records used by the Agency, in the denial of each and every Federal Tort Claim filed by Plaintiff, as set forth in Paragraph 87 above.

7. Enter judgment against the Agency in the amount of \$1,000,000 for the Agency's actions, as set forth above, for failing to correct Plaintiff's records, after Agency denials were made on "defective" records, and, as such, caused determinations adverse to Plaintiff.

8. Enter judgment against the Agency in the amount of \$2,000,000 for the additional adverse effects of "mental distress and emotional trauma" caused Plaintiff by the actions of the Agency. Said judgment is sought, as Plaintiff is unable to calculate "actual damages" to his physical and mental health, including, but not limited to, his interruption of treatment for his 100% PTSD disability, from February 1, 2004 to date, as a result of the Agency's actions in making wrongful denials on "defective" records, as well as, the Agency's failure to maintain accurate records on Plaintiff.

9. Award Plaintiff his costs in this action.

10. Grant such other and further relief as the Court may deem just and proper.


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